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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR 08-0237 MHP
	)	
Plaintiff,	)	
	)	
v.	)	JOINT MOTION AND REQUEST TO
	)	CONVERT SENTENCING HEARING TO
BECKY CHRISTIAN,	)	STATUS HEARING AND <del>[PROPOSED]</del>
	)	ORDER
Defendant.	)	
	)	

Pursuant to Criminal Local Rule 32-2, the United States and the defendant Becky Christian jointly request that the sentencing hearing presently set for May 23, 2011, be converted to a status hearing.

The standard plea agreement, signed by Ms. Christian, states as follows: “9. I agree to cooperate with the U.S. Attorney’s Office before and after I am sentenced. My cooperation will include, but not be limited to, the following: . . . (e) I will request continuances in my sentencing date, as necessary, until my cooperation is completed.” Therefore, Becky Christian joins this motion.

The defendant Becky Christian previously pled guilty pursuant to a plea agreement in which she agreed to cooperate with the United States in its investigation and prosecution of other

JOINT MTN. & ~~[PROPOSED]~~ ORDER  
CR 08-0237 MHP

1 individuals. It is now anticipated that Ms. Christian will testify at the trial of her co-defendant  
2 David Nosal. The Nosal case has been on appeal before the Ninth Circuit. Although the Ninth  
3 Circuit issued its opinion on April 28, 2011, it is not clear whether Nosal will seek a rehearing en  
4 banc. Regardless of the Ninth Circuit's disposition of the United States' appeal in that matter, at  
5 least some charges alleged in the Nosal Indictment will proceed to trial, and Ms. Christian will  
6 testify at that trial.

7 Because Ms. Christian's cooperation with the government's investigation and prosecution  
8 of other individuals is not yet complete, the parties jointly request that the Court convert the  
9 scheduled sentencing date of May 23, 2011, to a status hearing. The specific bases of the parties'  
10 request are set out in more detail below.

11 **I. Delaying Sentencing In This Matter Will Benefit The United States And Will**  
12 **Potentially Benefit The Defendant.**

13 A defendant who requests a continuance of her sentencing hearing should be able to  
14 demonstrate that the government either desires or can benefit from her cooperation. *Cf. United*  
15 *States v. Urben-Potratz*, 470 F.3d 740, 744 (8<sup>th</sup> Cir. 2006) (affirming denial of defendant's  
16 motion for continuance where defendant's additional cooperation would have required DEA to  
17 arrange an operation and approve defendant's participation in it and DEA "had already denied  
18 one such request").

19 In the present matter, Ms. Christian is cooperating with the government, and has been  
20 doing so pursuant to the terms of her plea agreement since 2008. In the past, Ms. Christian has  
21 participated in meetings with government investigators regarding the facts and circumstances of  
22 the conspiracy charged in the Nosal case. It is anticipated that she will participate in additional  
23 meetings once the Nosal matter is set for trial. Ms. Christian's further cooperation in this case  
24 does not require special arrangements, but rather only the defendant's testimony in the trial of her  
25 co-conspirator Nosal.

26 In addition, Ms. Christian's active cooperation, through testimony against her  
27 co-conspirator Nosal, may significantly alter the United States' recommendation (if any) as to an  
28 appropriate sentencing reduction by enhancing the value of the defendant's cooperation "in the

1 investigation or prosecution of another person who has committed an offense.” United States  
2 Sentencing Commission, Guidelines Manual § 5K1.1, p.s., comment. (n.3).

3 Finally, because Ms. Christian will be required to testify at trial, her cooperation with the  
4 government’s investigation is not yet complete. Pursuant to the terms of her plea agreement, Ms.  
5 Christian has agreed to request continuances of her sentencing date until her cooperation is  
6 completed. *See* Plea Agrm., ¶ 9.e. Indeed, the parties’ agreement anticipated that sentencing in  
7 this case would not proceed until Ms. Christian’s cooperation was complete.

8 **II. Neither The Defendant Nor the Government Will Suffer Inconvenience.**

9 Neither the government nor the defendant will suffer inconvenience by converting the  
10 sentencing hearing to a status hearing. While the parties acknowledge that inconvenience to the  
11 Court or witnesses may be an important factor in a consideration of whether to continue a trial, it  
12 is less important in the case of a short hearing where no witnesses are called and where re-  
13 calendaring may be accomplished easily. *United States v. Flynt*, 756 F.2d 1352, 1360 (9<sup>th</sup> Cir.  
14 1985) (contempt hearing); *see also United States v. Rivera-Guerrero*, 426 F.3d 1130, 1141 (9<sup>th</sup>  
15 Cir. 2005) (hearing regarding anti-psychotic drug administration).

16 In fact, courts routinely grant requests to continue sentencing hearings for the purpose of  
17 cooperation. *See United States v. Ressam*, 629 F.3d 793, 811 & n.2 (9<sup>th</sup> Cir. 2010) (referencing  
18 multiple sentencing continuances to allow for cooperation with the government, including a  
19 nine-month continuance “to allow Ressam ‘the opportunity to fulfill the terms of his promised  
20 cooperation’”); *United States v. Myers*, 993 F.2d 713, 714 (9<sup>th</sup> Cir. 1993) (referencing “many”  
21 continuances of defendants’ sentencing hearing for purpose of substantial assistance).

22 In this case, a sentencing continuance should not present substantial inconvenience to the  
23 Court or to third parties and will not inconvenience the government or the defendant, and its  
24 timing can easily be assessed based on the progression of the government’s case against David  
25 Nosal. Converting the sentencing hearing to a status hearing will also provide the Probation  
26 Office with additional time to complete the presentence report in this (and related) cases, and will  
27 allow the parties to maintain their focus on Ms. Christian’s continuing cooperation.

28 ///

1 **III. Conclusion.**

2 For all of these reasons, the parties jointly request that this Court convert the sentencing  
3 hearing presently set for May 23, 2011, to a status hearing.

4  
5 Respectfully submitted,

6 Dated: April 28, 2011

MELINDA HAAG  
United States Attorney

7  
8  
9 /s/  
KYLE F. WALDINGER  
Assistant United States Attorney

10  
11  
12 Dated: April 28, 2011

/s/  
STEVEN BAUER  
Attorney for defendant Becky Christian

13  
14  
15 **[PROPOSED] ORDER**

16 GOOD CAUSE APPEARING,

17 IT IS ORDERED that the sentencing hearing presently set for May 23, 2011, be  
18 converted to a status hearing.

19 Dated this May 4, 2011  
~~day April, 2011~~

